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DATE: February 15, 2006

TO: Tax Credit Stakeholders

FROM: William Pavão, Executive Director

SUBJECT: Proposed Regulation Change: Homeless Assistance Apportionment

This memorandum notices the public that the Tax Credit Allocation Committee (TCAC) staff is proposing a program regulation change to the homeless assistance apportionment within the 9% tax credit program. The following page contains (a) the current relevant regulatory text, (b) proposed changes to that text, and (c) the reasons behind the listed changes.

Background

TCAC staff proposed regulation changes to the homeless assistance apportionment in the January 11, 2006 package that we took before our Committee on January 18. That proposal sought to eliminate the current requirement that an application reflect McKinney Act or HOPWA funding committed to the project. Subsequent comment called to our attention additional changes needed to assure the new scheme was rationale and achieved good public policy outcomes.

At the January 18, 2006 Committee meeting, staff withdrew the recommended homeless apportionment language change from the larger regulation package adopted at that meeting. The Committee agreed to allow staff more time to refine the changes and bring them back separately for consideration. The language below reflects the product of that additional consideration and consultation.

Staff intends to recommend to the Committee that the proposed changes take effect for the second round of 2006. That is, the proposed rule changes would not affect the first funding round.

Please review the information below and provide to me directly any comment you wish to share. Thank you for your consideration.

Proposed Regulatory Language for TCAC's Homeless Assistance Apportionment (2-15-06)

Current Language:

Section 10315. Set-asides and Apportionments

- (b) Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available to projects assisted, under U.S. Code Title 42 Chapter 119 Subchapter IV Part E -- Miscellaneous Provisions, Assistance for Single Room Occupancy Dwellings or U.S. Code Title 42 Chapter 119 Subchapter IV Part F--Shelter Plus Care Program or U.S. Code Title 42 Chapter 131--Housing Opportunities for Persons With AIDS. If rental assistance is the type of assistance provided by the above named programs, the rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than thirty percent (30%) of the units in the proposed project. Any amount of Tax Credits apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Non-profit set-side.
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Proposed Revisions:

Section 10315. Set-asides and Apportionments

- (b) Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available to projects ~~assisted, under U.S. Code Title 42 Chapter 119 Subchapter IV Part E -- Miscellaneous Provisions, Assistance for Single Room Occupancy Dwellings or U.S. Code Title 42 Chapter 119 Subchapter IV Part F--Shelter Plus Care Program or U.S. Code Title 42 Chapter 131--Housing Opportunities for Persons With AIDS.~~ providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:

- First, projects with McKinney Act or State Homelessness Initiative funding committed.
- Second, projects with rental assistance funding commitments from federal, state, or local governmental funding sources. ~~If rental assistance is the type of assistance provided by the above named programs, the~~ The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than ~~thirty percent (30%)~~ fifty percent (50%) of the units in the proposed project.
- Other qualified homeless apportionment projects.

To compete in this apportionment, at least fifty percent (50%) of the units within the project must house households:

(1) Moving from an emergency shelter; or

(2) Moving from transitional housing; or

(3) Currently homeless which means:

(A) An individual who lacks a fixed, regular, and adequate nighttime residence; or

(B) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Any amount of Tax Credits apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Non-profit set-side.

Reason:

The proposed change removes the presence of federal McKinney Act or HOPWA funding as a threshold requirement for projects to compete in the homeless assistance apportionment. Federal McKinney Act funding is becoming proportionately scarcer and is less frequently committed to new residential developments. Instead, McKinney Act funds are more frequently being used to renew rental subsidies to formerly homeless populations residing in existing properties.

Federal HOPWA funding need not be targeted to homeless populations, and under current regulations HOPWA-funded projects may not be housing homeless populations at all.

Absent the required program linkage to McKinney Act funding, new regulatory language must define the homeless population to be served, requisite income targeting, and rent restrictions. New language establishes that at least 50 percent (50%) of the units must be for homeless households. This percentage replicates the requisite percentage for special needs projects. Unsuccessful homeless apportionment applications compete for special needs set aside funding (Section 10315(g)), so mutually consistent standards are appropriate.

The proposed language replicates the State Supportive Housing Program's regulatory definition of the term "homeless" (CCR Section 7341(b)). TCAC staff proposes this definition rather than the McKinney Act definition because the McKinney Act definition is a bit more restrictive in its view of individuals leaving institutional care. Specifically, under the McKinney Act definition, individuals leaving institutional care would be considered homeless only if (a) they spent fewer than 30 days in institutional care, and (b) they were without a home, in a shelter, or in transitional housing prior to their brief institutional stay.

Affordable rents to homeless households are communicated by reference to additional threshold requirements applied to special needs projects (Section 10325(g)(4)(A) and (D)). The referenced paragraphs establish that maximum initial incomes within the special needs units must average no more than 40% of Area Median Income. Also, lacking rental assistance, projects must demonstrate the affordability of those units to homeless households.

Finally, new language would establish homeless assistance apportionment priorities for receiving credits. Top priority would be projects with either federal McKinney Act or State Homeless Initiative funding committed. Second priority would be other projects with federal, state, or local rental assistance committed as specified. Final priority would be all other qualified homeless assistance applications. Within the first priority, scoring would determine funding. Once top priority projects are funded, remaining credits would be awarded to second priority projects based upon their scores.

The proposed priorities recognize the value of the referenced federal and state program resources, without making them threshold characteristics. Lacking those resources, greatest benefit derives to homeless populations through the commitment of publicly administered rental subsidies. Finally, for projects lacking either of those priority features, apportionment dollars would be made available to other homeless assistance proposals before those funds would go to other projects not providing homeless assistance.